IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 119 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

DIPAKBHAI BRIJLAL MEHRA

Appearance:

MR ND GOHIL, APP for Petitioner - State

MR RR MARSHALL for Opponent Nos. 1-2

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 26/12/2002

ORAL JUDGEMENT

1. The State of Gujarat has, by filing this present Criminal Revision Application under Section 397 read with Section 401 of Criminal Procedure Code, 1973 [for short "Cr.P.C.] challenged the correctness, legality, propriety and regularity of judgment rendered by the learned Additional Sessions Judge, Surat dated 03.02.1998 in Criminal Revision Application No.33 of 1997, by which the learned Additional Sessions Judge, Surat quashed and set aside the order dated 20.03.1997 passed below application

Ex.7 preferred by two accused, who are revision opponent Nos.1 and 2 in this present matter, in Criminal Case No.2794 of 1996.

2. The facts leading to this present Criminal Revision Application in a nutshell are as follows :-

2.1 One Shri Jaydip Jashvantray Dawar lodged his complaint on 25.04.1996 in Umra Police Station of Surat City. That complaint was lodged against two accused, who are revision opponent Nos.1 and 2 before this Court, for the offences punishable under Sections 447, 379, 427 and 114 of the Indian Penal Code, 1860 [for short "I.P.C."]. The Police Inspector of Umra Police Station of Surat City investigated the case and, ultimately, he filed a charge-sheet against two accused in the Court of learned Judicial Magistrate [F.C.] & 3rd Joint Civil Judge [J.D.], Surat [hereafter be referred to as the "learned Magistrate of the trial Court"]. That charge-sheet came to be registered as Criminal Case No.2794 of 1996. During the pendency of that case, the original two accused submitted an application Ex.7, on 21.01.1997, by which, they requested the trial Court to discharge them from the case. The learned Magistrate of the trial Court, after hearing the arguments of the learned advocates for both the parties came to a conclusion that there was a prima facie case against the two accused to frame a charge against them and, therefore, on the basis of that conclusion, he rejected that application Ex.7 filed by two accused.

3. Being aggrieved against and dissatisfied with the said order of rejection passed below application Ex.7, the original two accused preferred Criminal Revision Application No.33 of 1997 to the Court of Sessions, Surat. The learned Additional Sessions Judge, Surat, after examining the material on record and after hearing the arguments of the learned advocates for both the parties, by rendering her judgment on 03.02.1998 allowed that Criminal Revision Application No.33 of 1997 and quashed and set aside the order passed below application Ex.7 in Criminal Case No.2794 of 1996.

4. Being aggrieved against and dissatisfied with the said order dated 03.02.1998 allowing Criminal Revision Application No.33 of 1997 passed by the learned Additional Sessions Judge, Surat, the State of Gujarat has by preferring this present Criminal Revision Application challenged that judgment dated 03.02.1998 rendered by the Additional Sessions Judge, Surat in Criminal Revision Application No.33 of 1997.

5. I have heard Mr.N.D.Gohil, learned APP for the revision petitioner i.e. prosecution in the case before the trial Court and Mr.R.R.Marshall, learned advocate for the revision opponent Nos.1 and 2 i.e. original accused.

6. Mr.R.R.Marshall, learned advocate for the revision opponent Nos.1 and 2 has taken me through the impugned judgment rendered by the learned Additional Sessions Judge, Surat. From the facts narrated by the learned Additional Sessions Judge, Surat in her judgment dated 03.02.1998, the following facts are emerged for which there is no dispute from either side.

[i] The land bearing Plot No.15 in which criminal trespass was alleged to have been committed by the accused, is of an ownership of father of two accused.

[ii] Father of two accused has entered into an agreement for sale by executing a "Banakhat" on 12.03.1970. That Banakhat was executed in favour of one Shri Suredrakumar R. Gulati.

[3] Shri Suredrakumar R. Gulati has executed a Power of Attorney in favour of Shri Jashvantlal Pyarelal Dawar, who happens to be a father of the complainant Jaydip, who lodged a complaint against two accused.

From the record, it appears that some civil litigation is going on in between a father of two accused and Shri Surendrakumar R. Gulati in whose favour the "Banakhat" has been executed by the father of two accused. From the record, it also appears that an interim injunction has been granted by the Civil Court and, which has been confirmed by the High Court, directing the father of two accused not to alienate the suit property, till the final disposal of the civil litigation. From the record, it further appears that the father of two accused is an owner of Plot No.15 and he is in actual physical possession of that plot No.15, for which the Civil Court has directed him not to alienate. Shri Suredrakumar R. Gulati is a person in whose favour "Banakhat" has been executed by the father of two accused. Till date no final sale-deed has been executed in favour of said Shri Suredrakumar R. Gulati. He is merely having an interest in the property. From the record, it appears that Shri Suredrakumar R. Gulati has executed a deed of power of attorney in favour of father of the complainant i.e. Jaydip. Jaydip has no locus standi to lodge the complaint. All these facts have not been considered by the learned Magistrate of the trial

Court and, therefore, the learned Additional Sessions Judge, Surat has rightly considered the defence which could be taken by the two accused in the trial Court. The learned Additional Sessions Judge, Surat has rightly taken into consideration the material on record and, thereafter, she has come to a conclusion that there is no prima facie case against the two accused for framing a charge. Looking to the judgment of the learned Additional Sessions Judge, Surat, she has assigned cogent, plausible and possible reasons for setting aside the order of the learned Magistrate of the trial Court. In no case, the impugned order can be said to be an illegal order. The learned Additional Sessions Judge, Surat has rightly exercised her powers under Sections 397 and 399 of Cr.P.C. This Court is of the view that there is no material to interfere with the order of the learned Additional Sessions Judge, Surat, as there appears no illegality or impropriety in said impugned judgment.

7. In view of what is stated hereinabove, this Criminal Revision Application deserves to be dismissed and accordingly, it is dismissed. Rule is discharged.

[H. H. Mehta,J.]

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